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Spirit of the Sage Council

Defending and Conserving Native Plants, Wildlife, Ecosystems and Sacred Lands

October 27, 1998

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RE: Comments on the Draft EIR/EIS for the Headwaters Forest Acquisition and the PALCO Sustained Yield Plan and Habitat Conservation Plan (HCP)

Spirit of the Sage Council (Sage Council) has been monitoring and providing substantial comments on the NCCP program and regional conservation plans since 1991. The Sage Council is offering these brief comments today and will be expanding upon and amending them in a follow up comment letter. We are a non-profit conservation project and coalition of grassroots and national organizations, representing the public trust interests of approximately 1,000 individual members and supporters throughout the United States, Canada and Mexico. The Sage Council has representatives in the California counties of San Diego, Riverside, San Bernardino, Orange, Los Angeles, Ventura and Yolo.

- The goal and intent of the federal Endangered Species Act (ESA) is "to halt and reverse the trend towards species extinction, whatever the cost." (see TVA v. Hill, and Babbitt v. Sweet Home Chapter (1995) 132 L Ed 2d 597). The Sage Council has found the proposed Headwater HCP and associated documents and agreements fail to meet such goals.

In addition it appears that government agencies and Representatives acted against "We the People" and their public trust responsibilities when entering into Agreements (contracts) and passing legislation that would approve of the destruction of our natural resources within the Headwaters planning area.

- It is our opinion that these public hearings are nothing more than a kangaroo court. It appears that you are here today not to seriously consider public comment, but only to go through a public-feel-good hearing process. The State and Federal Government agencies and representatives have already made a decision regarding Headwaters – such decisions through entering into agreements and contracts are "pre-decisional" and unlawful, in violation of our Civil Rights, the Administrative Procedures Act, NEPA, the ESA and CEQA.

The Headwaters Agreement was signed and entered into on September 28, 1996 and with a pre-decisional agreement to issue Incidental Take Permits ("Pre-Permit Application Agreement"), that does not clearly identify the correct date on implementation (two dates occur on this document – February 27, 1998 and September 28, 1996) (see Appendices A-C). Clearly the Sage Council and public have been excluded from this government decision making process. We believe that the Sage Council and public have been severely harmed by such Agreements and that government agencies and administrators that

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entered into such predecisional contracts have over stepped their administrative authorities and have acted arbitrary and capriciously in such decisions that were made without using the best scientific data. This type of political scheming is clearly unlawful under 18 U.S.C. §1001. SSC-2

- The Sage Council's position is that the entire 211,000-acre Headwaters HCP/ITP planning area, as referenced in the Headwaters Agreement, be acquired and conserved in perpetuity for "We the People" of the California Republic and United States of America. All "public trust lands and natural resources" that are currently privately held by PALCO that are of ecological and cultural significance must be acquired through condemnation or other means that will ensure that the public trust is upheld by our state and federal public trust agencies. **The public trust bestowed upon our government by "We the People" must supersede the whims and desires of a corporation hell-bent on private profit through the pillaging of America's natural heritage.** SSC-3

The draft EIR/EIS for the Headwaters HCP does not provide an adequate range of alternatives that would include an environmentally superior alternative - which we believe would be the acquisition of the entire 211,00-acres of habitats within the planning area and no "take" of sensitive, rare and endangered species. We request that this alternative be included in the final EIR/EIS.

- As conservation programs director for the Sage Council and executive director for the National Endangered Species Network, I have participated in the review and comment of 20 HCP/ITPs in 13 states. In addition, we have been and are lead plaintiffs in the legal challenge to the federal governments utilization of the "No Surprises" policy and rule. As you are aware, we were successful in forcing the government to take public comment on such radical changes to the ESA (Spirit of the Sage Council, et. al. v. Bruce Babbitt, et. al., USDC D.C. Case No. 1:96CV02503, 10/31/96) and we expect to be successful in our current challenge since we have science on our side that unanimously agrees that the use of No Surprises will place endangered species at further risk of extinction.

- **The Sage Council requests that the public trust agencies take immediate corrective actions to ensure that the "No Surprises" assurances clause or guarantees be removed and rescinded from the Headwaters draft HCP/ITP, IA and associated documents including all Agreements.** For the administrative record and your consideration, the Sage Council is submitting a copy of our report to the U.S. Congress "No Surprises - The Policy of Extinction" and a white paper report "Science Missing In The No Surprises Policy" (Smallwood, et. al. 1997), including the associated letters of 7-28-97 and 7-26-97 from Dr. Smallwood, Consulting In The Public Interest, that was endorsed by 175 scientists and environmental professionals and a copy of our current legal challenge (Spirit of the Sage Council, et. al. v. Bruce Babbitt, et. al., USDC D.C. Case No. 1:98CV01873, 7/29/98) SSC-4

- We did not receive a copy of the requested documents and CD until October 22, 1998, and were unable to access the data from the internet website of the California Department of Fish and Game because the sites was not operating. In addition, the referenced documents are numerous in pages and impossible to read within the allotted amount of time, especially since they are written in a way that is very confusing and not easy to read. SSC-5

Therefore, the Sage Council requests that the lead approving and permitting agencies extend the public comment period for an additional 30-days, at a minimum.

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- The draft EIR/EIS is very difficult to read and comprehend to lay people or even the more experienced person. It is full of assumptions and unknowns regarding environmental impacts and effects on public trust natural resources, including habitats, watersheds, listed and unlisted species. CEQA, NEPA and the ESA require that the environmental documents be written in a way that is easily understandable and readable – these documents are not. SSC-6

Rather than stating assumptions throughout the documents, the Sage Council requests that it be stated that "it is unknown" what the environmental effects are or are expected to be. Doing so would provide less confusion to the interested public and possibly the courts, when the referenced HCP/ITP is legally challenged. We request that the public trust agencies review the recent court finding and decision, of August 1998, regarding the Alabama Beach Mouse HCP/ITP (Sierra Club, et. al. v. Bruce Babbitt, et. al., USDC Southern District of Alabama, Case No. 97-0691-CB-C) regarding the adequacy of data and decision making for HCP/ITPs and IAs. SSC-7

The Sage Council requests that the agencies seriously consider our comments and take the corrective actions necessary to ensure the **protection of listed species and ecosystems upon which they depend** within the Headwaters planning area. Please note that our additional comments will follow. We ask that your agencies and departments include these comments in the final EIR/EIS and include the Sage Council on the mailing and distribution list for all documents and notices regarding Headwaters. Thank you.

For the wild Earth,



Leeona Klippstein, Co-founder
Conservation Programs Director
Spirit of the Sage Council

cc: Eric Glitzenstein, Esq.
Meyer & Glitzenstein, D.C.

National Endangered Species Network